

APPENDIX VIII

MOU's, MOA's, LOA's and Other Interagency Agreements

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APPENDIX VIII

MEMORANDUM OF UNDERSTANDING
between the
ENVIRONMENTAL PROTECTION AGENCY
THE UNITED STATES COAST GUARD
and the
GENERAL SERVICES ADMINISTRATION
pertaining to the
FEDERAL RESPONSE UNDER THE NATIONAL OIL HAZARDOUS SUBSTANCES
POLLUTION CONTINGENCY PLAN (NCP)

I. GENERAL.

This Memorandum of Understanding (MOU) recognizes the general mission of the General Services Administration (GSA) to provide logistical and telecommunications support to the Federal establishment. The MOU specifically delineates the responsibility of GSA to provide assistance to the Environmental Protection Agency (EPA) and the United States Coast Guard (USCG). GSA will also provide assistance to other National Response Team (NRT) agencies supporting the response efforts through the On Scene Coordinator (OSC). It sets forth the procedures to be followed by EPA, the USCG, and GSA when such assistance is required to support those plans. The MOU also recognizes that the agency providing the OSC and/or member agencies of the NRT must reimburse GSA for its OSC activities and the activities of other responding agencies in providing the assistance described below.

II. BACKGROUND.

A. The Federal Response. The Federal response to oil discharges and hazardous substance releases are conducted in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The NCP effectuates the response powers and responsibilities created by the Comprehensive Environment Response, Compensation, and Liability Act, as amended (CERCLA), and the authorities of the Federal Water Pollution Control Act, as amended. Under the NCP, a Federal On-Scene Coordinator (OSC), designated by the EPA or the USCG is responsible for directing the response efforts and coordinating all other efforts at the scene of an oil or hazardous substance release. The USCG provides OSCs for oil and hazardous substance releases into or threatening the coastal zones. EPA provides the OSC for releases into or threatening the inland zone.

B. The National Response Team. The National Response Team (NRT), composed of 15 Federal agencies with major environmental and public health responsibilities for oil and hazardous substance releases, is the primary vehicle for coordinating Federal agency activities under the NCP. EPA chairs the NRT while the USCG serves as vice-chair. The Regional Response Teams (RRTs) are made up of regional representatives from each State within the region and are co-chaired by EPA and USCG. During the response the OSC (from EPA or the USCG) will be from the agency with appropriate jurisdiction. The RRTs serve as planning and preparedness bodies before a response, marshal their respective agency response, and provide coordination and advice to the OSC during response actions.

C. The Joint Response Team. A Joint Response Team (JRT) is composed of the RRT and the response team from another country which each RRT may be responsible to support. GSA will provide the JRT with the same types of logistical support as the NRT. When supporting a JRT operation, GSA's authority is derived from any agreement existing between the U.S. agencies GSA supports and the foreign nation(s) involved. During a JRT operation within the geographical limits of the U.S. or its territories, GSA will

support all agencies or foreign countries in accordance with those agreements. If the JRT operates in a foreign country or its water, GSA will provide services to U.S. agencies when the procurements can be executed in the U.S. regardless of the delivery point. However, GSA's ability to lease space and obtain support from foreign telecommunications carriers will depend upon the U.S. agency and foreign country agreement(s).

III. PRINCIPAL EPA/USCG STAFF.

A. National Offices. The principal point of contact in EPA Headquarters for the purpose of this MOU is the Director of Emergency Response Division, Office of Emergency and Remedial Response. The principal point of contact in the USCG Headquarters is Commandant, Office of Response (G-MRO).

B. Regional Offices. The principal points of contact in the field are Regional Response Team (RRT) Co-chairs (EPA/USCG). GSA and EPA regional offices and the appropriate USCG District will apprise each other of the names of principal points of contact.

IV. PRINCIPAL GSA STAFF

A. GSA Emergency Coordinator. The principal point of contact and the coordinating official in GSA Central Office is the GSA Emergency Coordinator.

B. Regional Emergency Coordinator. For a region where a potential or actual emergency has occurred, the GSA Regional Emergency Coordinator (REC) or a designated alternate is the regional point of contact for Regional Response Team (RRT) Co-chair alerts and requests for assistance. Once the emergency response is underway, the OSC will identify the support needed from the GSA REC.

C. Federal Emergency Support Coordinator. Upon an alert or request for assistance from the RRT Co-chair (EPA or USCG), the GSA Regional Administrator or a designated representative shall appoint a Federal Emergency Support Coordinator (FESC). The FESC shall serve as the principal point of contact between GSA and the OSC for the establishment of logistical support priorities, allocation of GSA resources, and coordination of the delivery of all GSA services, equipment, and materials including telecommunications. The FESC, with appropriate GSA support staff as determined by the Field Office will serve until released by the OSC.

D. Telecommunications Representative. When responding under the NCP, the RRT Co-chair may request that GSA designate a Telecommunications Representative to serve on the staff of the OSC. The representative will provide the services listed in par. VI below and will serve in that capacity until such time as the OSC determines that telecommunications requirements have been fulfilled. The representative will normally be located in the field office.

V. EMERGENCY CIRCUMSTANCES.

It is understood by the agencies who would provide the OSC that the implementation of agreements made herein requires prompt action to establish a command post or other field office in order to assist the affected State and local communities in response to an environmental emergency. Timeliness is especially critical when responding to a hazardous substance release/oil spill emergency or when one is imminent.

However, it is also recognized that the "unusual or compelling urgency" circumstance, authorized under 41 U.S.C. 253 c, must be supported by the written justification and approvals described in 6.303 and 6.304 of the Federal Acquisition Regulations (FAR). These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition. For these reasons, the provisions of section VII.A. of this MOU will be followed to ensure compliance with all relevant legal requirements. Decisions as to the degree of timelessness or urgency

required for GSA support will be made by the OSC, with the advice of the FESC. Verbal requests for GSA support will be followed up in writing in a timely manner.

VI. GSA RESPONSIBILITIES.

Upon request or tasking by the OSC, GSA shall provide a full range of timely logistical telecommunications and other support to the Federal response effort in accordance with Federal Acquisition Regulations (FAR), the GSA Acquisition Regulations (GSAR), and relevant public laws so that the command post may be operational no later than 48 hours after acceptance of the space by OSC or a designated representative.

A. Space.

1. After the OSC, in consultation with the GSA representative, has determined specific space requirements, operational facility needs, and a fund citation for the command post and other required support locations, GSA will expeditiously arrange for the use or leasing of such space. In addition to the written justification, the OSC, or a designated representative, will provide the GSA leasing specialist with a completed and signed SF-81, Request for Space, including a funding citation which supports the request and GSA Form 2957, Reimbursable Work Authorization, for any above standard items. The leasing specialist will provide the OSC, or designated representative, with the required forms and assist in their completion. GSA will use all available sources, including State and local governments, to obtain appropriate space so that the command post may be operational no later than 48 hours after acceptance of the space by the OSC or a designated representative.

2. It is understood that space requirements may change during the emergency period. If the OSC determines that an increase or decrease in space for the command post is required, it will provide GSA with 14 days prior notice to acquire the new space. In such cases, if the conditions still exist upon which a justification for the use of other than full and open competition procedures has been made, GSA will expedite the search for the requested new space.

B. Office Furniture and Equipment.

To allow for the timely opening of the command post or other field office locations, the required office furniture and equipment will be provided from sources that will be timely and be cost effective to the Government. Sources used can be excess or surplus inventories of the Federal Government, if available, or by lease or purchase from commercial sources determined by GSA to be in the Government's best interest.

C. Office Supplies.

Office supplies and other expendable items will be provided from either GSA or commercial sources. If from commercial sources, Blanket Purchase Agreements (BPA's) should be used with local vendors unless another method is determined to be more advantageous by the contracting officer. BPAs should be used with local vendors for purchases under \$25,000. The OSC or his/her designated representative, will provide the FESC with the names of people authorized to approve orders to BPA vendors, and the FESC will appropriately notify the vendors.

D. Transportation.

Transportation requirements, including motor pool management, necessary for the movement of personnel, equipment, and supplies shall be provided by GSA through Government-owned vehicles, established vehicle leasing contracts, or commercial haulers. Government credit cards for fuel will be furnished with Government-owned vehicles. Accountability for credit cards and expenses incurred from their use will be the responsibility of the agency using them. Upon request GSA will provide all required

land, sea, and air transportation services, to move emergency supplies, water, food, medicine, personnel, etc.

This shall include the use of DOD transportation assets where applicable. If Government or contracted transportation assets are not available or cannot be provided in a timely manner, these services will be obtained through local contracts in accordance with procedures outlined in FAR 8-1102 and 8-1103-11.

E. Telecommunications.

GSA will provide requested telecommunications services. This includes: trunk lines and other circuits; facilities layout of telephone, switchboard, and teletype services; equipment maintenance; and consultation and technical assistance regarding the establishment or relocation of ADP services. When activated the GSA Telecommunications Representative will coordinate the use of the communications assets and the fulfillment of communications requirements of all responding agencies in accordance with priorities established by the OSC. Any declaration of a telecommunications emergency will be done by the Lead Agency, after consultation with the OSC and the GSA Telecommunications Representative, in accordance with the National Communications System (NCS) National Security Emergency Preparedness (NSEP) Telecommunications Procedures Manual. Neither the OSC nor the GSA Telecommunications Representative will request implementation of the NSEP Telecommunications Procedures, except in severe emergency circumstances. The GSA Telecommunications Representative is authorized to act as a Designated Agency Representative (DAR) for the purposes of ordering FTS 2000 services.

F. Printing, Graphics and Reproduction Services.

The GSA Regional Emergency Coordinator will make prior standing arrangements with the GSA Regional Printing and Distribution Branch to ensure "rapid turnaround" of printing, photographic reproduction, layouts, blueprints, forms, and other graphics as ordered by the FESC.

G. Advisory Personnel.

GSA will make technical advisors available to the OSC in the areas of acquisition, storage, transportation and other areas as required. Engineering assistance will also be made available for help in damage surveys, appraisals of buildings for demolition or repair, etc.

H. Procurement of Staff Quarters.

It is generally agreed that each Federal agency will remain responsible for the location and assignment of housing for its staff. However, it is understood that GSA may be tasked by the OSC to procure accommodations directly or to coordinate all or part of the Federal staff housing requirements.

I. Other Services.

GSA shall provide or contract for logistical and other support as requested or tasked by the OSC, which may include, but is not limited to: mobile home acquisition; assistance in the restoration of interrupted public utility service to Federal agencies; the loan of excess Federal personal property and its return to the holding agency after use; donation of Federal surplus personal property for use and ultimate disposition by State government in accordance with current procedures; preliminary damage assessment; cleanup contractor services; specialized technical support; and other support as required.

VII. OSC RESPONSIBILITIES.

A. Notification.

1. Potential Emergency. The OSC will alert the GSA Emergency Coordinator or Regional Emergency Coordinator of conditions which could result in a need for emergency support. The OSC alert shall include a fund citation, the name and address of the organization to receive bills, logistical requirements, and the potential area of the operation to enable GSA to take the appropriate actions to allow for the expeditious opening of the command post as soon as possible after the notification.

2. Emergency Operations. Upon implementation of emergency response operations, the OSC will request the GSA Administrator or Regional Administrator to provide specific logistical support and include a fund citation authorizing GSA to contract on behalf of the OSC for those goods and services requested, up to any funding limit which may be imposed. If the initial request is issued verbally, it shall be confirmed in writing within 48 hours. The written confirmation will include an indication of the degree of urgency and the timeliness required for provision of GSA support. It will also include, if needed, the basis for other than open and full acquisitions to be made by the GSA contracting officer(s) in accordance with Section 2711 of the Competition in Contracting Act and FAR 6.302-6. The OSC after consulting with the FESC will determine the date after which other than full and open acquisition can no longer be justified. All GSA contracts executed on the OSC's behalf will be in accordance with regulation and appropriate laws.

3. Documentation. The OSC will indicate concurrence with any acquisition made by GSA for goods or services. Verbal requests for such acquisitions will be followed by written concurrence within 72 hours. The OSC will also provide GSA with proof of receipt of goods or services ordered by GSA on its behalf. The proof of receipt shall be signed by the OSC or his/her authorized representative.

B. Coordination of GSA Services.

1. To assure full GSA support to the OSC and the entire Federal establishment involved in a specific emergency response effort and avoid duplication of requests for services, equipment, or materials, the OSC will request each supporting agency to appoint a logistics coordinator if appropriate. All specific agency requirements for logistical support will be submitted to the OSC, through its logistical coordinator, then to the GSA FESC.

2. To increase the effectiveness of GSA's response capability, RRT Co-chairs will ensure that GSA headquarters and GSA regional offices, as appropriate, are invited to participate with members of the RRT in planning and operational meetings that involve or impact on the GSA designated areas of responsibility. Such meetings include, but are not limited to, planning meetings, operational meetings, and post-emergency critiques. Copies of reports reflecting on the services of GSA in support of this MOU will be forwarded to the GSA Emergency Coordinator.

3. The agency providing the OSC and GSA headquarters agree to work to resolve outstanding logistical support issues that are referred to the headquarters level. It is expected that the OSC, the FESC, other appropriate regional agency officials, and GSA regional officials will make every attempt to resolve issues at the command post and regional office levels prior to forwarding such issues to headquarters for resolution.

4. The OSC will assume accountability for all furniture, office equipment, and other equipment and materials leased or rented by GSA for response under the NCP. The OSC will assume responsibility for the maintenance and repair of the aforementioned equipment and furniture. The OSC must ensure that a signed receipt is obtained for such furniture and equipment upon return to the vendor.

5. For the purpose of monitoring the authorized expenditures and facilitating timely documentation of procurement support records, the OSC agrees to review periodically with the FESC the order values placed under BPA's.

C. Closing the Commanding Post.

1. At the time the command post is established, the OSC or his/her designated representative will give the FESC an estimate of how long the command post will remain open, and will notify him/her in a timely manner of any change in that estimate. The OSC will provide written notice to the REC at least three workdays before closing the command post. Except as indicated in VII.C.2 below, GSA support to the Federal emergency response will normally cease upon closure of the command post, at which time all further logistical and financial support will be provided to the OSC through its normal operating procedures. Normally, all equipment on loan or lease will be returned at this time. Also, any contracts or service arrangements requiring GSA intervention will be terminated. Any active contractual agreements and/or arrangements for service required by the OSC after the closing of the command post will become the full responsibility of the OSC, or other member agencies of the NRT, unless GSA is specifically requested to provide continuing services. The GSA Federal Supply Service support may continue until completion of utilization and donation actions, if any.

2. If a telecommunications representative was activated to coordinate the initial installation of the telecommunications services, and it is anticipated that some other NRT member agencies may continue field operations after the OSC has officially closed its command post, the telecommunications representative will arrange in advance for continuation of communications support to other agencies once the OSC has determined a close out date. In this situation, the OSC will provide reasonable advance notice to the telecommunications representative before closing the command post. Barring an explicit, written agreement to the contrary, the agency of the OSC or GSA is not responsible for any costs associated with the operation of an office in the area of the emergency after the command post has officially closed.

VIII. ADMINISTRATION.

A. Billing and Reimbursement.

1. Direct Billing. GSA will instruct all vendors providing goods and services pursuant to contracts executed by GSA, how to prepare and forward billing. If the OSC is represented by the USCG, all bills shall be sent to the OSC at the Captain of the Port address unless directed to do otherwise. If the OSC is represented by the EPA, all bills shall be sent to the EPA Finance Center in Cincinnati, OH for review then on to the OSC for action. Bills should be received by the OSC not later than 60 days after the goods or services were delivered and final bills should be marked "FINAL." Any procedures or coordination considered necessary will be agreed upon by GSA and the OSC and applied uniformly to each agency's respective regional or district office to allow GSA to complete any contractual administration required. Once the OSC's parent organization receives the invoice, it should be processed in accordance with the Direct Cite/Revised Reimbursement Methods, dated May 1990, (EPA) or the National Pollution Funds Center cost documentation procedures.

2. GSA Reimbursement. For reimbursable expenses GSA incurs in supporting any activities covered by this MOU, GSA will obtain reimbursement from the OSC through the Department of the Treasury's On-Line Payment and Collections (OPAC) System. GSA will submit OPAC bills via its regular billing cycles for each of its programs (semi-monthly) for purchases of supplies, monthly for telecommunications, motor pool and printing services; and quarterly for items to be billed via a Reimbursable Work Authorization (RWA). Billing will be in compliance with the provisions of 44 CFR, Part 206, Reimbursement of other Federal Agencies, to the extent they are applicable. GSA will also provide copies of the billed RWA or other backup documentation necessary to clarify the OPAC charges. Bills will specify the requests for assistance to which they apply, and the backup documentation will list items by object class and cost element and will indicate (a) amount previously billed, (b) current billing amount, and (c) cumulative amount billed to date.

3. Reporting. The agency providing the OSC agrees to minimize any special reporting requirement for support provided by GSA. Any record keeping and reporting requirements that are over and above those

specified in 44 CFR, Part 205, Subpart I, will be concurred upon by GSA and the agency providing the OSC at the headquarters level and applied uniformly to each agency's respective regional offices.

B. Audits.

1. CERCLA, SARA, Section 111(k) requires the Inspector General of each Agency using the Superfund to conduct an annual audit of all transactions by that Agency using the Superfund. GSA cost documentation will be available for audit or verification upon request of the GSA Inspector General (IG). If, based upon an audit by the GSA IG, GSA determines that any direct or indirect costs charged to the Superfund is unallowable, the GSA will immediately notify the EPA and immediately reimburse the Superfund.

2. If EPA or USCG requests an audit above the normal CERCLA and SARA audit requirements, EPA or the USCG, as appropriate, will reimburse GSA for the resultant audit costs.

3. When requested by the OSC's Agency, the GSA IG will test GSA's controls in its billing procedures and will audit selected bills that GSA has submitted to the OSC to determine if they are properly supported. The GSA IG will consult with the OSC's Agency on the limitations of the scope of each review, the selection of controls to be tested, and the bills to be audited. Audit reports will be provided to the OSC's Agency IG for subsequent distribution to appropriate internal agency offices.

IX. COORDINATION AND REVIEW.

To ensure ongoing coordination and implementation of this MOU, the following procedures will be established:

A. The responding member agencies of the Regional Response Team shall meet, as required, after an emergency operation to review the OSC and GSA coordination and cooperation at the regional and/or field levels. They will provide input to the OSC for inclusion to the after action report. Copies of the OSC after action report will be submitted to the GSA Emergency Coordinator for his/her review.

B. The emergency coordinator of the agency providing the OSC or other designed representative and the GSA Emergency Coordinator shall meet as necessary, to review agreements described herein and to consider changes and/or additions and review recurring problems identified in OSC after action reports.

(DATE)

MARTHA N. JOHNSON
ASSOCIATE ADMINISTRATOR
FOR MANAGEMENT SERVICES AND
HUMAN RESOURCES
GENERAL SERVICES ADMINISTRATION

(DATE)

STEPHEN D. LUFTIG
DIRECTOR
OFFICE OF EMERGENCY AND REMEDIAL RESPONSE
ENVIRONMENTAL PROTECTION AGENCY

(DATE)

CAPT. RICHARD E. BENNIS
CHIEF, RESPONSE DIVISION
MARINE SAFETY AND ENVIRONMENT DIRECTORATE
UNITED STATES COAST GUARD


DOCUMENT SUMMARY

1. TO:
2. FOR SIGNATURE OF:
3. DATE DUE:
4. SUBJECT: Memorandum of Understanding among GSA. The Environmental Protection Agency (EPA) & the U.S. Coast Guard
5. ☒ Basic Document ___ Response Control No.:
6. CRSP.

7. CONCURRENCES							
ITEM	CRSP SYM.	SIGNATURE (Sign full name)	DATE	ITEM	CRSP. SYM.	SIGNATURE	DATE
A.	CAO	DAN COOPER		H.			
B.	CA	GREG KNOTT		I.			
C.	C	MARTHA JOHNSON		J.			
D.				K.			
E.				L.			
F.				M.			
G.				N.			

8. ACTION OFFICER: GORDON R. TASSI
9. CRSP. SYM.: CAOD
10. TEL.: 501-0012
11. TYPIST:
12. TEL.: 501-0012
13. NUMBER OF SIGNATURES REQUIRED BY FINAL SIGNING OFFICIAL: 3
14. SUMMARY

The attached Memorandum of Understanding (MOU) among the GSA, Environmental Protection Agency (EPA) and the U.S. Coast Guard (USCG) defines the operational and fiscal relationships necessary to efficiently and effectively fulfill a Federal Response to an Oil or Hazardous Material Spill. The preparation and coordination process for this document began in May 1991. This Memorandum was originally signed by GSA in Sept. 1994. The EPA Inspector General (IG) refused to clear the document for signature. The document was returned in Jan. 1995, resigned and returned to EPA in Feb. 1995. The document was changed to reflect the concerns of the EPA IG. The GSA IG has concurred with the changes. The document then underwent an additional review in EPA and has been there since. On Mar. 14, 1996, the undersigned received a telephone call from EPA and the USCG requesting additional changes. Those requested were to realign the legal citations to match legislative changes since the GSA signature and to changes the signature blocks to show the incumbent officials. Based on the signature levels used by the EPA and USCG, Mr. Knott can sign for Ms. Johnson if desired.

	TYPED NAME AND SIGNATURE OF AUTHOR	SYMBOL	TELEPHONE	DATE
	<u>GORDON R. TASSI</u>	<u>CAOD</u>	<u>501-0012</u>	
	<u>3/21/96</u>			

GENERAL SERVICES ADMINISTRATION

GSA FORM 3401-EF(5/89)



CORRESPONDENCE ROUTING SLIP

FOR SIGNATURE OF:

CONTROL NUMBER

ADDRESSEE:

ROUTE

DATE: _____

#	CORRESPONDENCE SYMBOL	IN	OUT	INITIAL
1.	CAO			
2.	CA			
3.	C			
4.				
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15.				
16.				

APPENDIX III

ATTACHMENT A

GENERAL SERVICES ADMINISTRATION GSA FORM 3400-EF(5/89)

United States Environmental Protection Agency Washington DC 20460	1. EPA / IAG Identification Number	4. Funding Location by Region 09	
Interagency Agreement / Amendment EPA	2. Other Agency ID Number	5. Program Office Abbreviation	
Part I - General Information	3. Type of Action New	SFD92	
6. Name and Address of EPA Organization U.S. EPA Region 9, Superfund Division, Emergency Response Section, SFD92 75 Hawthorne Street San Francisco, CA 94105	7. Name and Address of Other Agency U.S. GSA Region 9 Management Services Division (9CA) 450 Golden Gate Ave San Francisco, CA 94102		
8. Project Title: EMERGENCY RESPONSE AND REMOVAL SUPPORT ACTIVITIES IN EPA, REGION 9			
9. EPA Project Officer (Name, Address, Telephone Number) Barbara Lee, Project Officer U.S. EPA Region 9 Superfund Division, SFD92 75 Hawthorne Street San Francisco, CA 94105	10. Other Agency Project Officer (Name, Address, Telephone Number) Robert A. Brown, Jr., Project Officer U.S. GSA Region 9 Management Services Division (9CA) 450 Golden Gate Ave San Francisco, CA 94102		
11. Project Period 08/01/02 - 09/30/07	12. Budget Period 08/01/02 - 09/30/07		
13. Scope of Work (Attach additional sheets, as needed) See ATTACHMENT A - SCOPE OF WORK (MOU between EPA, USCG, and GSA for Federal Response under NCP). See ATTACHMENT C for process in issuing work.			
14. Statutory Authority for Both Transfer of funds and Project Activities CERCLA: SEC. 105(a)(4), 115, NCP, and Stafford Act		15. Other Agency Type	
FUNDS	PREVIOUS AMOUNT	AMOUNT THIS ACTION	AMENDED TOTAL
16. EPA Amount		50,000.00	\$ 50,000.00

17. EPA In-Kind Amount			\$	0.00
18. Other Agency Amount			\$	0.00
19. Other Agency In-Kind Amount			\$	0.00
20. Total Project Cost			\$	50,000.00
21. Fiscal Information				

Site Name	DCN	FY	Approp.	Budget Org.	Program Elem.	Object	Site/Project	Cost Org.	Obligation
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EPA Form 1610-1 (Rev.10-88). Previous editions are obsolete.

Part II - Approved Budget		EPA IAG Identification Number
22. Budget Categories	Itemization of This Action	Itemization of Total Project Estimated Cost to Date
(a) Personnel	\$ 10,000.00	\$ 10,000.00
(b) Fringe Benefits		\$ 0.00
(c) Travel	\$ 2,500.00	\$ 2,500.00
(d) Equipment	\$ 5,000.00	\$ 5,000.00
(e) Supplies	\$ 2,500.00	\$ 2,500.00
(f) Procurement / Assistance	\$ 30,000.00	\$ 30,000.00
(g) Construction		\$ 0.00
(h) Other		\$ 0.00
(i) Total Direct Charges	\$ 50,000.00	\$ 50,000.00
(j) Indirect Costs: Rate _____% Base \$_____.		
(k) Total: (EPA Share: _____%) (Other Agency Share _____%)	\$ 50,000.00	\$ 50,000.00
23. Is Equipment authorized to be furnished by EPA or leased, purchased, or rented with EPA funds? (X) Yes () No (identify all equipment costing \$1000 or more.)		
24. Are any of these funds being used on extramural agreements? (See Item 22f.) (X) Yes () No		

28. Special Conditions (attach additional sheets if needed)

STATUTORY AUTHORITY: EXECUTIVE ORDER 12580, NATIONAL OIL AND HAZARDOUS
SUBSTANCES POLLUTION CONTINGENCY PLAN (NCP) AND STAFFORD ACT.

SEE ATTACHMENT B FOR SPECIFIC TERMS AND CONDITIONS.

Part V - Offer and Acceptance

Note: 1) For Funds-out actions, the agreement/amendment must be signed by the other agency official in duplicate and one original returned to the Grants Administration Division for Headquarters agreements or to the appropriate EPA Regional IAG administration office within 3 calendar weeks after receipt of within any extension of time as may be granted by EPA. The agreement/amendment must be forwarded to the address cited in Item 29 after acceptance signature.

Receipt of a written refusal or failure to return the properly executed document within the prescribed time may result in the withdrawal of the offer by EPA. Any change to the agreement/amendment by the other agency Subsequent to the document being signed by the EPA Action Official, which the Action Official determines to materially alter the agreement/amendment, shall void the agreement/amendment.

2) For funds-in actions, the other agency will initiate the action and forward two original agreements/amendments to the appropriate EPA program office for signature. The agreements/amendments will then be forwarded to the appropriate EPA IAG administration office for acceptance signature on behalf of the EPA. One original copy will be returned to the other agency after acceptance.

EPA IAG Administration office (for administrative assistance)

EPA Program Office (for technical assistance)

29. Organization/Address
U.S. ENVIRONMENTAL PROTECTION
AGENCY

30. Organization/Address

Certification

All signers certify that the statements made on this form and all attachments thereto are true, accurate, and complete.

Decision Official on Behalf of the Environmental Protection Agency Program Office

31. Signature

Typed Name and Title

Date

Action Official on Behalf of the environmental Protection Agency		
32. Signature	Typed Name and Title	Date
Authorizing Official on Behalf of the Other Agency		
33. Signature	Typed Name and Title	Date

EPA Form 1610-1 (Rev. 10-88)

APPENDIX III:

Attachment B

TERMS AND CONDITIONS FOR LOGISTICAL TELECOMMUNICATIONS AND OTHER SUPPORT GENERIC IAG

The USGSA agrees to meet the site-specific financial management and record keeping responsibilities contained in EPA's "Superfund Financial Management and Recordkeeping Guidance for Federal Agencies" (January 1989).

A. Cost Documentation Requirements

EPA, acting as manager of the Hazardous Substances Superfund, requires current information on Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and Emergency response actions and related obligations of CERCLA and Federal Emergency Management Act (FEMA) funds for these actions. In addition, CERCLA, as amended, authorizes the government to recover, from responsible parties, all government costs incurred during a response action. In order to help assure oversight and successful recovery of CERCLA funds, both USGSA and EPA have responsibilities under this agreement. USGSA accounting system reports must be supported by site and activity specific cost documentation. USGSA will organize and retain in site file(s) documentation of costs by site and activity (e.g., vouchers, billing statements, evidence of payment, audit reports) as follows:

Direct Costs

- Payroll - Time sheets or timecards to support hours charged to a particular site, including the signature of the employee and/or the employee's supervisor. However, all subsequent revisions to the timesheet must be signed by both employer and employee's supervisor.
- Travel - travel authorizations (including purpose of trip), local travel vouchers, traveler's's reimbursement vouchers, carrier bills (including airline tickets), government owned vehicle bills appropriate receipts for hotel, car rental, etc., proof of payment. Proof of payment is satisfied by providing a copy of the accomplished SF 1166 "Voucher and Schedule of Payment" or equivalent.
- Contractor Services - copies of contracts, requests for proposals (RFP's), detailed evaluation of contractor bids, contractor invoices, USGSA Project Officer approval of invoices, proof of payment. Proof of payment is satisfied by providing a copy of the accomplished SF 1166 of equivalent.
- Supplies and Equipment - EPA authorization to purchase non-expendable property of \$5,000 or more, vendor invoices, proof of payment, and hourly record of equipment use, when applicable.
- Any other direct costs not included in the above categories.

2. Reporting Requirements

3. USGSA will provide monthly progress reports each month, to the EPA Regional Project Officer, EPA, Region IX, 75 Hawthorne Street, SFD92
San Francisco, CA 94105, containing:

- Site name and IAG number;
-
- Summary of work performed;
- Estimate of the percentage of project completed;
- Accounting of funds expended during the reporting period and on the project to date, which includes budget category cost breakdown.
- Summaries of all change orders and claims made on the contract during the reporting period. Attach copies of all change orders as appendix.
- Summaries of all contacts with representatives of the local community, public interest groups, or State government during the reporting period.
- Summaries of all problems or potential problems encountered during the reporting period;
- Projected work and funding for the next reporting period.
- Request for Reimbursement (SF1080) of all USGSA costs will be submitted to the EPA Financial Management Center, Cincinnati, for payment during the reporting month.

USGSA will submit a request for reimbursement (SF 1080) to the EPA Financial Management Center, Cincinnati, containing, as appropriate, USGSA costs by budget category identified by the site, site-specific account number, and IAG number.

USGSA will provide a final inventory property, within 30 days of the end of the Interagency Agreement performance period, describing the condition of each item. If the duration for the project is greater than one year, USGSA will provide an annual inventory of all property acquired by or furnished to USGSA with EPA funds.

Cost Recovery

In the event of a contemplated cost recovery action against Potential Responsible Parties, EPA will request that USGSA will provide the EPA and/or the Department of Justice (DOJ) a cost documentation package detailing site-specific costs and including copies of the back up documentation. In some cases, these requests from EPA or DOJ may require that this documentation be provided in less than 30 days. If additional time is required to comply with a request, a mutually agreeable schedule will be negotiated between USGSA and EPA and/or DOJ. All documentation is subject to redaction based on the Privacy Act and Confidential Business Information regulations. USGSA will provide EPA with a contact for obtaining necessary site-specific accounting information and documentation.

Record Retention Requirements

USGSA and its contractors will retain the documents described in these "Terms and Conditions" for a minimum of ten years after submission of a final SF 1080 for a site or sites, after which USGSA and its contractors must obtain written permission from the authorized EPA official before disposing of any of the records. USGSA will require all contractors entering into cost reimbursable type contract to establish and maintain cost documentation as described above. If any litigation claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the ten-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later.

Audits

All Superfund cost documentation information must be available for audit or verification upon request of authorized auditing agencies.

If an audit determines that any direct or indirect costs charged to EPA are unallowable, EPA will be notified by USGSA immediately following the resolution of the audit.

Minority Business Utilization

The USGSA will utilize Small Business Concerns as defined in FAR Part 52.219-8 to the extent required by law and USGSA policy.

Other EPA Involvement

Payment of USGSA contractors is contingent upon receipt of USGSA certified payment request.

Reimbursement to USGSA for in-house costs is contingent upon receipt of a USGSA certified reimbursement of request (SF1080). Final project payments for specific contracts and in-house costs shall be reviewed and approved by the EPA Regional program office.

EPA will hold title to all property acquired with Superfund monies. EPA will provide the USGSA the property disposition instructions upon termination of the IAG. EPA will require fair-market value for any property disposed of or used for non-Superfund activities.

This agreement may be terminated by either agency upon a 60-day advance written notice. If the agreement is terminated prior to completion, EPA will reimburse USGSA for those expenses it has obligated itself for. USGSA will use due diligence to terminate any outstanding obligations. Notwithstanding those efforts, EPA shall be responsible to reimburse USGSA for all expenses and costs it incurs in furtherance of this agreement even if those costs are paid subsequent to termination.

APPENDIX III

ATTACHMENT C

PROCESSING OF SUPERFUND GENERIC (MULTI-SITE) IAGS

Purpose and Definition

Generic agreements are used to obligate funds, under one Interagency Agreement (IAG), for future work at several sites in cases where site-specific assignment have not yet been identified. The intent of generic IAGs is to reduce the administrative burden on other agencies and EPA of having to process separate site-specific IAGs for small repetitive assignments which often must be initiated on short notice. This method of funding, through a generic IAG, allows EPA to provide the other agency authority to begin site-specific assignments by means of work authorizations without the possible delay of processing a site-specific IAG.

Acceptance of a generic IAG merely sets aside unobligated funds in the other agency's financial system. The other agency has no authority to obligate funds to a site-specific task until EPA issues a site-specific work authorization form. Work authorization forms can be processed with a minimum of administrative delay since they can be approved/authorized by EPA Regional Division Director of designee. After receipt of a work authorization form from EPA, funds on the generic IAG can be obligated to a site-specific assignment by another agency. Work cannot begin on any assignment until the other agency has received a work authorization form. In certain emergency situations, telecopied work authorization forms may be used to initiate work.

The other agency will incur site-specific work authorization costs and charge them to the work authorization account until all deliverables of the work authorization for that site are completed. If additional time is needed to provide deliverables, the work authorization must be extended. The generic IAG project period must also be extended to encompass the duration periods of all work authorizations initiated and/or extended under it.

When work to be done by another agency for EPA requires the IAG processing detailed above, EPA may elect to use a generic IAG.

EPA Responsibilities

Originates and executes the generic IAG. The EPA Regional Program Office prepares and processes an IAG package for a designated sum of money and for one general type of work (e.g. technical assistance or first phase design). The total amount of the generic IAG should be the estimated cost of work to be performed during the fiscal year.

Initiates and executes work authorization. Once verbal agreement has been reached between EPA and the other agency to accomplish a site-specific task under the generic IAG, the EPA Regional Program Office:

- Prepares two copies of the work authorization form, including a transmittal letter, which deobligates funds from the generic IAG and obligates them to a site.
- Obtains approval/signature from the EPA Division Director or designee.
- Forwards a work authorization, with original signature, site Name and number, period of performance, and all pertinent accounting data to the other agency

- Reviews and approves invoices, insuring that billings are appropriate and accounting data is cited accurately (e.g., IAG number, site-specific account number).

Processes all work authorization amendments, including a transmittal letter. If an assignment requires an increase in funds, a second work authorization form must be processed to move additional funds from the generic IAG to the site-specific work assignment.

- Adjusts accounts and assigns site-specific accounting data, as necessary.

Cancels a work authorization. A work authorization should be canceled upon receipt of notification from the other agency that the site work assignment was not performed, funds were never obligated, and funding authority is no longer required. A cancellation is accomplished through a letter to the other agency requesting that unused funds be removed from the site-specific account and returned to the generic IAG for future site-specific assignments. That cancellation letter must cite appropriate accounting data.

Closes out a work authorization. Close out of a work assignment is accomplished when:

The other agency informs the EPA project officer that the site work assignment has been completed and indicated that amount of excess funds available for deobligation.

EPA issues a letter to the other agency (with a copy to CFMC) stating that all activity at the site has been completed and unused funds will be deobligated by EPA.

CFMC deobligates unused funds from the work authorization (upon receipt of its copy of the work assignment closeout letter).

Closes out a generic IAG. A generic IAG may be closed out only after all work assignment activities have been completed with all invoices processed and paid.

Other Agency Responsibilities

Maintains generic and site-specific accounts. After the work authorization form is issued, the other agency reduces the generic IAG by that amount, and the work authorization form is treated as an independent site-specific IAG. In addition to complying with the special conditions of the generic IAG, the other agency records costs and requests payment from EPA for site-specific work authorization deliverables (through one of these payment method of SF 1080).

Notifies EPA of amendments, cancellations or close out of work assignments:

The other agency requests additional funds, extensions to period of performance and cancellation of work authorizations (i.e., funds) by contacting the EPA Regional Program Office. The other agency submits notification of completion of each work assignment to the EPA regional office. Upon completion of all work assignments under a general IAG, the other agency notifies EPA so that the generic IAG may be closed out.

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Interagency Agreements Pertaining to the State of California

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MEMORANDUM OF AGREEMENT
ON
OIL POLLUTION PREVENTION AND RESPONSE
BETWEEN
THE COMMANDER, ELEVENTH COAST GUARD DISTRICT
AND
THE-STATE-OF CALIFORNIA

WHEREAS, Congress enacted the Oil Pollution Act of 1990 (OPA 90) to protect the waters of the United States from oil pollution and to plan for the effective and immediate response in the event of an oil spill, and the President subsequently designated the Coast Guard as the Federal On Scene Coordinator (ZOSC) within the California coastal zone; and

WHEREAS, Congress has decided in a number of enactments, including OPA 90, not to preempt the various States from regulating certain matters associated with the protection of waters within their jurisdiction from oil pollution, which matters are also subject to regulation by the Coast Guard under OPA 90 and other statutes; and

WHEREAS, Congress explicitly provided that the provisions of OPA 90 do not: (1) preempt or affect the authority of any state to impose additional liability or requirements respecting oil discharges or other oil pollution within such a state or removal activities in connection with such a discharge; (2) affect the authority of any state to establish or continue to fund, any purpose of which, is to pay for oil pollution or the substantial threat of oil pollution costs or damages, or to require any person to contribute to such a fund; or (3) affect the authority of any state to impose any fine or penalty for violation of law relating to a discharge; and

WHEREAS, the State of California has enacted the LempertKeene-Seastrand Oil Spill Prevention and Response Act of 1990, hereinafter referred to as the California Act, to protect the waters of the State from oil pollution and to plan for the effective and immediate response, removal, abatement, and cleanup in the event of an oil spill and to augment State authority for the prevention and response to spills in waters under the jurisdiction of the State; and

WHEREAS, the California Act provides that the Administrator of the Office of Oil Spill Prevention and Response (OSPR) is appointed by and acts at the direction of the Governor. The Administrator acts as chairperson of the State Interagency Oil Spill Committee (SIOSC) and coordinates actions through the State committee and review subcommittee; and

WHEREAS, the Administrator, subject to the Governor, and through the Department of Fish and Game, has the primary State authority to direct prevention, removal, abatement, response containment and cleanup efforts, with regard to all aspects of any oil spill in the State waters, in accordance with any applicable marine facility or vessel contingency plan, and the State Oil Spill Contingency Plan; and

WHEREAS, the State Lands Commission has the primary State authority to adopt rules, regulation, guidelines and commission leasing policies for reviewing the location, type, character, performance standards, size, and operation of all marine facilities on lands leased from the Commission and all existing and proposed marine terminals within the State; and

WHEREAS, the Commander, Eleventh Coast Guard District is the senior Coast Guard officer within the State of California, exercising Federal authority under the Oil Pollution Act of 1990 and other Federal laws with respect to oil pollution planning and response in waters subject to the jurisdiction of the United States in and outside the State of California and matters dealing with areas of vessel manning and safety equipment; and

WHEREAS, marine oil spills require a rapid, efficient, and coordinated response and cleanup by Federal, State, and local agencies as well as from private entities to minimize the deleterious effects on human, wildlife, and other natural resources; and

WHEREAS, both the Coast Guard and the State recognize the critical roles each has within their respective areas of authority in preventing oil-spills and in planning for and responding to oil spills; and

WHEREAS, the Parties recognize the cooperation between them in the implementation and exercise of their respective statutory and regulatory authority is essential to avoid conflict and unnecessary duplication; and

WHEREAS, the Parties believe and intend that by acting in a cooperative and coordinated manner, the effect will be a synergistically enhanced oil spill prevention and response effort in the State of California;

NOW THEREFORE, the Parties agree, to the extent permitted by law, and as consistent with their respective policies and available resources, to cooperate and to coordinate their efforts in implementing and exercising their respective statutory and regulatory duties related to oil spill prevention and response.

I

PARTIES

The Parties to this Memorandum of Agreement are the Eleventh Coast Guard District ("Coast Guard") and the State of California ("State").

II

PURPOSE OF THE AGREEMENT

The purpose of this Memorandum of Agreement (MOA) is to ensure the Parties exercise their respective authorities regarding oil spill prevention, planning, and response in a manner so as to avoid unnecessary duplication and conflict and to ensure best achievable protection from the impact of pollution incidents for the navigable waters of the United States which are within or may impact the State waters of California; subject to each Party's statutory, regulatory, and policy requirements.

III

DEFINITIONS

Except where otherwise specifically defined in the context of its use herein, or where specifically set forth below, terms used in this Memorandum of Agreement (MOA) shall have the meaning as set forth in Federal law and applicable State law.

A. Specific definitions:

1. State Waters: Federal regulations designate the Coast Guard as the Federal On Scene Coordinator (OSC) within the California coastal zone. The Environmental Protection Agency (EPA) is the OSC for oil spills within the inland zone. The jurisdictional boundary between these zones is specified in the Federal Region IX Regional Response Team Contingency Plan. The term "State waters" shall mean those navigable waters of the United States which lie within the jurisdiction of the State of California and over which the Coast Guard has concurrent Federal authority for oil spill response.

2. Marine Oil Spill Contingency Plan: The Marine Oil Spill Contingency Plan is an addendum to the State Oil Spill Contingency Plan, which in turn is a part of the State Hazardous Materials Incident Contingency Plan. Under this scheme the Department of Fish and Game Director is the State Incident Commander for inland oil spills and the Administrator of OSPR is the State Incident Commander for marine oil spills.

IV

INFORMATION SHARING

The exchange of information between the Federal government and the State relative to historic pollution events and current risks is necessary to develop appropriate prevention and response systems. Both Parties maintain information systems that are relevant to both historical and real-time incidents. The Parties require the fullest degree of information sharing from available and pertinent data bases in order to make accurate and timely decisions to prevent and or respond to oil pollution.

Transmissions of information shall be in accordance with procedures adopted by the Parties for that purpose.

A. Action:

1. The Parties agree to share information on Prevention Through People (PTP) programs sponsored by Coast Guard, or other human factor initiatives that either party may undertake.

2. The Eleventh Coast Guard District will advise the State of information it receives of the following events occurring in the navigable waters, or that may impact the State, involving vessel disablings, collisions, groundings, explosions, rammings, allisions, distress and other events when oil pollution or substantial threat of oil pollution results. The State will ensure that its emergency notification systems report these incidents to the Coast Guard.

3. The Parties agree to identify and share existing data bases, including the Marine Safety Information System (MSIS), and work toward developing risk management programs that provide risk data sharing for vessels and access by both parties to all data, subject to the requirements of applicable law, regulation, and policy, in a manner to conserve and leverage agency resources.
4. Initiatives taken to limit the introduction on nonindigenous aquatic nuisance species into State waters will be sought through appropriate State or federal regulation. Information concerning aquatic nuisance species programs shall be shared by the Parties as appropriate.
5. The Parties agree, subject to limitations imposed by applicable law or regulations, to share information from relevant studies.

V

OIL SPILL RESPONSE PREPAREDNESS

The National Contingency Plan (NCP) establishes the response organization within the United States and requires tiered contingency planning efforts. The State, consistent with the NCP, defines its response organization through the State Hazardous Material Plan and addenda to the Oil Spill Contingency Plan.

A. Planning Documents

1. National Oil and Hazardous Substances Pollution Contingency Plan ("National Contingency Plan - NCP"):

The Environmental Protection Agency (EPA) is the lead agency in drafting, and the Coast Guard and EPA are jointly responsible for implementing, the NCP which governs actions concerning spill response and cleanup for Federal, State, local agencies, responsible parties, clean-up contractors and others participating in such actions in United States waters.

- a. Action: The State will work with the Coast Guard to ensure State plans and policies for marine environmental protection are consistent with the NCP.

2. State Hazardous Material Incident Contingency Plan and the State Oil Spill Contingency Plan:

The State Office of Emergency Services (OES) is responsible for developing and maintaining the Statewide Contingency Plan that details State responsibilities, policies, and actions governing response to spills in waters of the State. The OSPR has specific statutory authority and responsibility concerning oil spills.

- a. Action: The Coast Guard will consult with the State to ensure State plans and policies for marine environmental protection are consistent with the NCP.

3. Area Contingency Plan:

The Area Committees, established by the President under the authority of the Oil Pollution Act of 1990, are responsible for the development of Area Contingency Plans for those Areas under the direction of the Federal On Scene Coordinator (OSC). The Area Contingency Plans describe the responsibilities of owners, operators and Federal, State and local agencies in responding to oil spills or threats of spills, list equipment and personnel available to respond, describe procedures for the use of dispersants and describe how the Area Contingency Plan integrates with other plans. Area Contingency Plans are adopted by amendments to the State Contingency Plan to facilitate and coordinate on-going work with local municipalities and coastal counties. Through the OSPR Local Grant Program, municipal and county governments are also included in State and Federal planning documents. The objective is to create consistency between the local, State, and national contingency plans.

- a. Action: The Parties agree to consult with each other to enhance contingency planning and to ensure that the Area Contingency Plans and Statewide Master Plan are consonant and uniform, subject to the requirements of existing law.

4. Facility Oil Spill Response Plans:

Facility Oil Spill Response Plans are required by both Federal and State law. These plans describe facility capabilities to prevent and respond to pollution emergencies. The State and the Coast Guard will coordinate with the Department of Transportation (DOT), Mineral Management Service (MMS), and the Environmental Protection Agency (EPA) in assessing facility contingency plans.

- a. Action:

- (i) Subject to the requirements of applicable law, regulations and policy, the Parties will develop a system to coordinate, to the extent practicable, the Parties' cooperative review and approval of facility contingency plans. The Parties agree to conduct reviews of facility contingency plans in as much of a coordinated and non-duplicative manner as is permitted by applicable laws, regulations and procedures.

- (ii) The Coast Guard and the State will cooperate to ensure that requirements for facility response plans are compatible and do not conflict. The Parties will work together to determine the feasibility of the Coast Guard accepting State review of facility contingency plans, subject to Coast Guard oversight.

5. Vessel Oil Spill Response Plans:

Vessel oil spill response plans are required by both Federal and State law. These plans describe vessel capabilities to prevent and respond to pollution emergencies.

- a. Action:

- (i) Although the Parties recognize the need to independently review vessel plans for compliance with their respective laws and regulations, the Parties agree to conduct reviews of vessel contingency plans in as much of a coordinated and non-duplicative manner as permitted by applicable laws, regulations and procedures.
- (ii) The State shall accept to the maximum extent practicable the Federal vessel contingency plan requirements and shall prepare supplementary forms for parties to comply with State requirements in areas such as preventive measures which are in addition to Federal requirements.
- (iii) The Parties will cooperate to ensure that requirements for vessel contingency plans are compatible and do not conflict. The Parties will work together to determine the feasibility of the Coast Guard accepting State review of vessel contingency plans, subject to Coast Guard oversight.

B. Government Committees

The National Contingency Plan (NCP) directs the organization of government committees to prevent and respond to pollution emergencies.

1. Regional Response Team:

The Region IX - Regional Response Team (RRT) is

established as a coordinating committee by the NCP and includes the State along with the Federal agencies with pollution prevention and pollution response responsibilities.

- a. Action: The Parties agree to jointly participate as members of the Regional Response Team (RRT). RRT participation includes both attending regularly scheduled meetings and responding during incident specific RRT mobilization.

2. Area Committees:

Area Committees were established by OPA 90 to maximize State and local participation in contingency planning.

- a. Action: The Parties agree to coordinate local response planning by jointly participating in the Area Committee planning process. Both Parties are strongly committed to participating in Area Committee Plan development and the use of the Area Committees in conducting exercises and drills, consistent with the provisions of the NCP and applicable State contingency plan.

3. Mexico/United States Pact (MEXUSPAC) Joint Regional Response Team:

The MEXUSPAC Joint Regional Response Team (JRRT) is established in accordance with the NCP to prepare for and respond to pollution emergencies that may impact the international border area between the United States and Mexico on the Pacific coast.

- a. Action: The Coast Guard will advise the State of all agreements, plans, and standard operating procedures (SOP) developed to coordinate pollution response with Mexico. During an incident specific mobilization of the MEXUSPAC JRRT, the State will be represented through the State RRT representative who will be from the Department of Fish and Game.
- 4. State Interagency Oil Spill Committee (SIOSC): SIOSC is responsible for coordinating oil spill prevention, response, planning and policy at the State level.
 - a. Action: The Coast Guard is invited to provide input and recommendations to the SIOSC.
- 5. State Harbor Safety Committees: State Harbor Safety Committees are responsible to evaluate and recommend ways to improve the safety of navigation in harbors and harbor approaches.
 - a. Action: The Coast Guard is invited to provide input and recommendations to the Harbor Safety Committees.

C. Drills and Exercises:

Drills and exercises are required by both Parties to ensure the readiness and interoperability of pollution response organizations. It is the intention of the Parties to encourage coordination, participation, and cross-training in periodic drills and exercises to facilitate a better understanding of each Party's duties and responsibilities as well as to ensure a combined, effective, familiar working relationship at oil spill incidents.

a. Action:

- (i) The Parties agree to interact in the planning, scheduling, design, conduct and evaluation of exercises as time and resources permit. In this context, the Parties recognize the role of the National Strike Force Coordination Center, as the focal point for exercise strategy for all elements of the National Response System, in scheduling, designing, executing, evaluating and providing feedback on all National Response System PREP exercises in conjunction with the appropriate RRT and Area Committees.
- (ii) The Parties agree to make available, as time and resources permit, any published annual reports as required by OPA 90 and State statutes concerning evaluations of drills and recommended changes to the National and Area Contingency Plans.

D. Certification of Oil Spill Response Organizations:

Both Parties evaluate, categorize, and certify oil spill response organizations.

1. Action:

- a. The Coast Guard and the State will cooperate to the maximum extent practicable to evaluate, categorize, and certify oil spill response organizations. The Parties will develop joint certification guidelines and conduct independent or joint reviews as necessary or desirable.

- b. The State shall accept to the maximum extent practicable the Federal compliance documents for Federal certification and shall prepare supplementary forms for compliance with State regulations.

VI

PREVENTION OF OIL SPILLS

A. Cooperative Implementation:

The Parties are coordinating their efforts to prevent oil spills in the marine environment.

1. Action: To the extent permitted under applicable laws, the Parties agree to cooperate in the execution of their respective regulatory responsibilities, to minimize duplication of effort, and to identify opportunities for innovative implementation of casualty prevention plans. Both Parties recognize the importance to encouraging cross-training in each other's regulations and rules including the areas of inspection and response. Each Party must exercise its own rulemaking implementation responsibilities independently and in accordance with applicable rulemaking procedures. Federal inspection requirements associated with vessel safety are not subject to supplemental State regulation.

B. Vessel Inspections:

Each Party recognizes that the other must independently exercise its respective examination responsibilities in accordance with applicable law, regulations and policies. The Coast Guard conducts inspection programs for the purpose of enforcing both international agreements and domestic law aboard United States and foreign flagged vessels. The State, under the California Act, is required to evaluate that inspection process and make recommendations for improvement.

1. Action:

- a. The Parties agree to work together to avoid inconsistent requirements and to find ways to conduct vessel inspections in such a way that disruption to the industry is minimized and efficiency and safety maximized.
- b. In implementing any State examination programs, the State agrees to avoid conflicts and unnecessary duplication in reviewing Federal inspection programs by on-going consultation with the Coast Guard.
- c. Review of inspection records: The Parties agree to make inspection records available to the other and to cooperatively review inspection results, subject to applicable laws, regulations, and procedures.
- d. The State shall report to the responsible officer in charge, marine inspection (OCMI), recognized discrepancies in meeting the requirements of international agreements believed to exist aboard United States and foreign flagged vessels.

- e. Requirements in State Waters: The Parties will cooperate to establish consistent pollution prevention requirements, and to cooperatively monitor, examine and exchange information relative to those requirements, for vessels to operate in State waters.
- f. The State will promptly inform the cognizant OCMI, and the Coast Guard will promptly inform the Administrator or his designee, of any situation or circumstance relative to a vessel whose condition or equipment may significantly increase the potential for an unauthorized discharge or create an unusual or an unacceptable risk to public health and safety or the safety of navigation within State waters.
- g. The Parties agree to share all applicable information obtained from their respective vessel inspections and examinations.

C. Vessel Screening:

The Coast Guard, under Federal law, through the District Commander and the Captain of the Port (COTP), has the authority to regulate the entry of vessels, including those determined to be a threat to the environment. The State may establish the means by which it can determine whether tank vessels entering the State waters pose a substantial risk of harm to public health and safety and the environment.

- 1. Action: When the State determines that a particular vessel or vessels pose a substantial risk, that determination will be forwarded to the cognizant Captain of the Port (COTP). The COTP shall consider that information in making a determination under Federal law as to appropriate action to be taken, if any, including the possibility of denial of entry.

D. Tank Vessel Equipment:

The Coast Guard conducts inspections and examinations to ensure compliance with requirements for equipment to ensure safety of life at sea aboard vessels. The California Act authorizes the Administrator to conduct vessel inspections. Both Parties conduct examinations to ensure compliance with requirements for pollution prevention and pollution response equipment.

- 1. Action: The Parties will cooperatively examine pollution prevention and pollution response equipment aboard vessels and report noncompliance to the other Party.

E. Tank Vessel Manning:

The Coast Guard establishes and enforces requirements for manning, competence, and documentation of personnel aboard tank vessels.

- 1. Action:
 - a. The State will assist the Coast Guard to evaluate and coordinate additional requirements for manning, training, and qualification requirements through the manning standards process.

- b. The Parties agree to actively promote and coordinate research projects, such as PTP, to identify human factors which need to be regulated to prevent pollution incidents.

F. Tank Vessel Transfer Operations:

Monitoring tank vessel transfer operations has been identified as an effective pollution prevention action.

1. Action:

- a. The Parties will cooperate to monitor transfer operations aboard tank vessels, including, but not limited to, dockside transfers at facilities and lightering and bunkering operations. The Coast Guard acting through the Marine Safety Offices (MSO's) and the State agree to cooperate in the scheduling of monitoring vessel transfer operations to make best use of limited resources and avoid redundant oversight and disruptions to industry. Each Party will advise the other of violations observed.
- b. The Parties will cooperatively monitor and examine pollution prevention and pollution response equipment during transfer operations. Each Party will advise the other of violations observed.
- c. The Parties agree to make transfer monitor records available to each other and to cooperatively review monitoring results, subject to applicable laws, regulations and procedures.

G. MARPOL 73/78

MARPOL 73/78 is the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto:

MARPOL 73/78 is an international agreement implemented to reduce pollution from vessels.

- 1. Action: The Parties will cooperate in the enforcement of existing MARPOL requirements. The Coast Guard will keep the State informed concerning MARPOL regulations, and both Parties will work together to develop disposal services adequate to support port operations.

H. Facility Inspections:

Facility inspections are conducted by both Parties to ensure compliance with pollution prevention and pollution response regulations. The State has statutory responsibility for oil transfer facilities and their operation within the State. Included in this responsibility is the requirement to establish regulation and inspection programs governing oil transfer facilities. This includes regulation and inspection of oil transfer operations between marine facilities and tank vessels.

1. Action:

- a. Facility Inspection: The Parties will coordinate their respective inspection and monitoring activities to the extent practicable to utilize the resources of both Parties efficiently and effectively. Cognizant inspectors from both Parties may carry out inspections and other activities jointly where appropriate.

- b. Equipment: The Parties will cooperatively enforce requirements for pollution prevention and pollution response equipment at marine facilities.
- c. Manning: The Parties will cooperatively enforce requirements for trained and qualified personnel to be responsible for transfer operations at marine facilities.
- d. MARPOL Reception Facilities: The Parties will work together to ensure adequate facilities are present to receive garbage, sewage, and oily wastes from vessels.
- e. The State will promptly inform the COTP, and the USCG will promptly inform the State, of any situation or circumstance relative to facilities whose operation or equipment may significantly increase the potential for an unauthorized discharge or create an unusual or an unacceptable risk to public health and safety, or the safety of navigation within State waters.

I. Waterways Management:

1. Port and Waterways Safety

The Captain of the Port (COTP) is the predesignated Federal official with primary responsibility to exercise control of vessels to ensure the safety and security of ports and waterways. Under the California Act, Harbor Safety Committees are created and are responsible for the planning of safe navigation and operation of tankers, barges, and other vessels in harbors and harbor approaches.

a. Action

- (i) The State will promptly inform the COTP, and the Coast Guard will promptly inform the appropriate State authority, of any situation or circumstance relative to vessels whose operation or equipment may significantly increase the potential for an unauthorized discharge or create an unusual or an unacceptable risk to public health and safety, or the safety of navigation within State waters.
- (ii) The State is guided by recommendations from the Harbor Safety Committee for the planning of safe navigation and operation of tankers, barges and other vessels within each harbor. The State, in adopting regulations to implement the Harbor Safety Plan will coordinate with the COTP.

2. Vessel Traffic Services (VTS)

The Ports and Waterways Safety Act authorizes the Coast

Guard to construct, operate and maintain vessel traffic services in the areas subject to the jurisdiction of the United States. The Federal system of VTS is designed and empowered to inform, advise, and direct marine traffic in designated areas. Federal VTSs require the participation of certain classes of vessels and may direct the movement of those vessels to reduce navigational risks.

In 1991, the Coast Guard completed a VTS Ports Needs Study to determine which United States ports would gain the most benefit from the presence of a Federal VTS. The California ports and waterways included in the Port Needs Study were Los Angeles/Long Beach, Santa Barbara Channel and the ports in and around San Francisco Bay.

a. Action:

- (i) The Coast Guard maintains a Federal VTS in San Francisco Bay. The State will cooperate with the Coast Guard to ensure expansion of the existing VTS system within San Francisco, San Pablo, Suisun Bays as well as the Gulf of the Farallones.
- (ii) A Vessel Traffic Information System (VTIS) for Los Angeles/Long Beach is maintained under a joint partnership between the Marine Exchange, the State and the Coast Guard.

3. Pilots

Federal law requires pilots aboard vessels sailing within the coastwise trade. Foreign vessels or United States vessels engaged in foreign trade may be controlled by State pilotage requirements. In the absence of State pilotage regulations, the Federal government may impose pilotage requirements on those vessels.

- a. Action: The Coast Guard and the State intend to enter into a memorandum of agreement with California's port and harbor authorities for the purpose of creating a state pilotage system ; except for the port and harbor authorities falling under pilotage jurisdiction of the Board of Pilot Commissioners for San Francisco, San Pablo and Suisun Bays, where the Coast Guard recognizes the State regulation of pilotage.

4. Tug Escorts

Federal and State law authorize the regulation of the use of tug escorts and may require either equipment or standards of performance deemed necessary for the function.

a. Action:

- (i) The State and the Coast Guard agree to consult with each other in issuing any regulations requiring tug escorts to ensure that they are consistent to the extent permitted by law.
- (ii) Towing Equipment: The Parties agree to review requirements for tow equipment for barges and tank vessels carrying oil in bulk, with the purpose of determining whether additional standards for equipment, maintenance, operation, and inspection should be adopted.

5. Aids to Navigation (ATON)

The Coast Guard establishes, regulates, and maintains a uniform system of aids to navigation within the United States.

Action: The State will assist the Coast Guard by recommending changes, improvements, or repairs that may improve aids to navigation, in cooperation with the Harbor Safety Committees.

J. Public Information/Education

The Parties agree that public education in areas of pollution prevention, which includes oil, hazardous substances and garbage, is a high priority and that each agency shall seek opportunities to coordinate pollution prevention public awareness and education programs.

1. Action:

- a. Marinas: Public information and education will be cooperatively developed and implemented targeting marina operations to reduce pollution from oil, toxic substances, garbage, and sewage.
- b. Small Oil Transfer Facilities: Public information and education will be cooperatively developed and implemented targeting small oil transfer facilities to reduce pollution from oil, toxic substances, garbage, and sewage.
- c. Recreational Vessels: Public information and education will be cooperatively developed and implemented targeting the recreational boating community to reduce pollution from oil, toxic substances, garbage, and sewage.

VII RESPONSE

Federal law established the Coast Guard as the primary Federal agency tasked with responding to oil spills on the navigable waters of the United States. In such cases, the Federal On Scene Coordinator (OSC) is the predesignated official responsible for directing response actions. The OSC may direct or monitor all Federal, State, and private actions in response to an oil spill or a potential oil spill in State waters. The Parties will respond to marine oil spills as required by and in accordance with the National Contingency Plan (NCP). The OSC will consult, as required by OPA 90 and other applicable Federal law, with the OSPR Administrator or designee concerning oil spill response activities. State law provides that OSPR is responsible for coordinating State oil spill cleanup efforts.

A. Notification:

The Parties agree to provide the earliest possible notification of discharges of oil and hazardous substances and imminent threats of such discharges to each other in accordance with applicable law, regulations and policies consistent with the National Oil and Hazardous Substances Pollution Contingency Plan and applicable area contingency plans. In order to provide a single point of contact for the OSC in the event of a marine oil spill, the OSPR Administrator or designee will represent all State agencies and will be the primary point of contact.

B. Incident Command System (ICS)/Unified Command Structures (UCS):

The Incident Command System (ICS)/Unified Command Structure (UCS) establishes functional responsibilities, lines of communication, information sharing and control for the conduct of an oil spill response operation.

1. Action:

- a. The Parties agree to work together within the framework of their respective authorities to ensure a coordinated effort with a minimum of duplication in response to oil spills.
- b. The Parties agree to implement an ICS/UCS to ensure coordination of emergency response decision-making during a pollution incident. In those circumstances where governmental action is required to develop and direct action to clean up or abate the effects of an oil spill, the Parties agree to consider best utilization of existing resources, avoiding duplication, while taking advantage of resource availability. The OSC may request the State to undertake response actions on a case-by-case basis. If the State assumes responsibility for response activity, the State will conduct those activities, as directed by the OSC, in accordance with the National Contingency and Area Contingency Plans.
- c. Response Decisions: The OSC will coordinate with the State in decision-making relating to the conduct of oil spill response operations including, but not limited to: salvage, lightering, safe haven and other matters affecting the discharge of spilled oil, its containment or its cleanup.
- d. The Parties agree to establish a joint public information center to provide for the coordinated dissemination of information during a response operation. This provision does not preclude the Parties from making independent responses to the media and the public.

C. Natural Resource Protection

Both Parties recognize the importance of protecting and preserving natural resources in responding to an oil spill. Both Parties agree that response strategies and procedures will be established through the Unified Command Structure (UCS), in accordance with applicable laws, regulations, and policies, and procedures. The Area Contingency Plan (ACP) will be used as the primary guidance document regarding resource protection.

D. Response Monitoring and Technology

Both Parties agree that the methods used to clean up oil and oily debris shall be established through the Incident Command System (ICS)/UCS which will determine the level of action which is required.

1. Action:

- a. Both Parties agree, through the Incident Command System, to provide timely input and recommendations to the Unified Command, to the extent practicable, on dispersant usage, in situ burning, bioremediation, and other non-mechanical cleanup technologies.
- b. Both Parties agree that decisions to discontinue clean up operations and demobilize response activities shall be made through the Unified Command Structure. The State retains the right to undertake response, remedial or mitigating actions beyond the response actions completed by the OSC.

E. Incident Command System (ICS) Training

Both Parties acknowledge the necessity for increased and ongoing training in ICS procedures to maintain a qualified pool of response personnel.

1. Action:

- a. Both Parties agree to establish training criteria appropriate to their agencies.
- b. Both Parties agree to pursue joint training opportunities and instruction.
- c. To better prepare for an oil spill where a responsible party is not present or not identified, the State and each COTP shall prepare an action plan for, and exercise the Incident Command System. Such action plans shall be reviewed, updated, and exercised as needed.

VIII

NATIONAL POLLUTION FUNDS CENTER INFORMATION

A. The Oil Spill Liability Trust Fund (The Fund).

The Fund provides funding under certain conditions for oil discharge removal actions. The Fund is available in certain circumstances to compensate the State for incurred costs and damages associated with oil discharges. To the extent allowed, a State may access the Fund under current regulations and National Pollution Fund Center (NPFC) procedures.

1. Action: Upon the publication of regulations implementing Section 1012(d)(2) of OPA 90, the State may negotiate directly with the NPFC to establish a cooperative agreement to provide access to the Fund under Section 1012(d)(2). Any agreement between the State of California and the National Pollution Fund Center shall be attached as an annex to this MOA.

B. The National Pollution Fund Center (NPFC)

1. The NPFC administers the Oil Spill Liability Trust Fund (The Fund) in order to: provide funding for oil removal activities, provide State access to the Fund, conduct cost recovery, accept and process claims, and evaluate requests by Federal trustees to fund initiation of natural resource damage assessments. The NPFC also administers Certificates of Financial Responsibility and provides CERCLA/Superfund funding to Coast Guard On Scene Coordinators (OSC) responding to hazardous material incidents.
2. The State may receive payment from the Fund in the State's role as a response organization engaged in removal activities consistent with the National Contingency Plan, as an appropriate claimant for damages, and in the State's role as a natural resource trustee. In addition to the text herewith concerning Section 1012(d)(2) of the Oil Pollution Act of 1990 (OPA 90), the State recognizes the following provisions outline alternative funding methods for State removal activity:
 - a. Section 1012(d)(1). Regulations under Section 1012(d)(1) of OPA 90 allow the NPFC, upon request of the Governor of a State and as authorized by the Federal On Scene Coordinator (OSC), to obligate The Fund for payment in an amount not to exceed \$250,000 for removal costs, consistent with the National Contingency Plan (NCP), required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil. The NPFC's Technical Operating Procedures (TOPS) for State access under Section 1012(d)(1) of OPA 90, and the TOPS for resource documentation under OPA 90 are approved guidelines for State use to access the Fund under this section.
 - b. Claims. Regulations under Section 1012(a)(4) of OPA 90 authorize use of The Fund for the "payment of claims in accordance with Section 1013 of OPA 90 for uncompensated removal costs determined by the President [Coast Guard] to be consistent with the NCP or [for] uncompensated damages." Procedures for claims are found in 33 CFR Part 136. States have a special status under Section 1013 of OPA 90 regarding claims for uncompensated costs which allows States to make such claims directly to The Fund rather than first to the responsible party.
 - c. The State agrees to eliminate excessive overhead expenses associated with the cost recovery program so that only those individual claims in excess of a dollar amount to be determined through consultation with the Coast Guard and eligible for compensation shall be submitted to the Fund.
 - d. Working Directly for the OSC. State agencies may work directly for the On Scene Coordinator (OSC) in performing removal actions. In these situations, the OSC issues a Pollution Removal Funding Authorization (PRFA) to the State to establish a contractual relationship and to obligate The Fund. The OSC actively directs and is responsible for the response actions. The OSC may request State assistance and participation in emergency removal actions under CERCLA in response to a hazardous materials incident or threatened incident and where funding for these actions is established in a PRFA.
3. Natural Resource Damage Assessments. A State natural resource Trustee may request access to the Fund for the initiation of an assessment of natural resource damages resulting from a discharge of oil, through a Federal Lead Administrative Trustee (one of the Federal Trustees designated in the NCP), in accordance with the procedures established by the NPFC (Section 6002(b) of OPA 90).

IX ENFORCEMENT

Enforcement action by either Party may include civil and criminal penalties. The Coast Guard may also take action against Coast Guard merchant marine licenses and seamen's documents.

A. Action:

1. Subject to the requirements and limitations of applicable State and Federal law, the Parties agree to cooperate to the fullest extent possible in marine casualty investigations and pollution investigations including, but not limited to: the sharing of information regarding witnesses, reports, analyses, and other available information, or evidence that may assist in determining the cause of the casualty or pollution incident.
2. Enforcement action undertaken by each of the Parties must occur independently in accordance with applicable laws and regulations. The Parties agree that to the extent they can, they will consult with each other as to intended enforcement action.
3. The Parties agree to investigate the feasibility of the Coast Guard utilizing the Department of Fish and Game Petroleum Chemistry Laboratory for the analysis of Coast Guard oil samples.

X RULEMAKING

A. Issuance of Regulations

The Oil Pollution Act of 1990 and other-Federal law provides for the issuance of regulations pertaining to the prevention of oil spills from vessels. The Commandant of the Coast Guard has the authority to promulgate such regulations. The Commander, Eleventh Coast Guard District, and the respective Captains of the Port have limited authority to promulgate local regulations. Acting under its inherent regulatory authority and under authority not preempted by Federal law, the State has the authority to promulgate regulations concerning oil spill prevention which do not conflict with, and which are not otherwise preempted, by Federal law. It is the intention of the parties to maintain close communications to reduce conflict between each Party's permits, directives, and instructions.

1. Action:

- a. The intent of this section is to avoid conflict and inconsistent regulation in rulemaking wherever possible, subject to applicable procedural rules, and to endeavor to provide a coordinated, synergistic response to oil pollution planning and response. It is the intent of the Parties to endeavor under their respective authorities to assure the best achievable protection for the waters of the State.

b. In addition, the respective Federal and State procedures for noticing the opportunity to comment on proposed rules, the Parties anticipate that through their participation on committees and day-to-day working communications, the concerns of each will be discussed and given due consideration.

B. Containment and cleanup for refueling, bunkering or lightering operations OPA 90 and other Federal laws regulate refueling, bunkering and lightering operations. Federal regulations enforced by the Coast Guard govern these operations. Subject to the requirement that they be consistent with Federal regulations, the State may issue its own regulations relating to these same operations.

C. Tank Vessel Response Equipment Rules

Federal law governs the standards for response equipment. State law authorizes the adoption of State standards for spill response equipment to be maintained on tank vessels operating in waters of the State. State rules must be consistent with Federal spill response equipment standards.

XI

AGREEMENT

A. This agreement represents a voluntary understanding between the Eleventh Coast Guard District and the State of California.

B. The terms of this agreement may be changed at any time by the Parties by a written, signed amendment hereto with or without notice to any other person.

C. The agreement may be terminated by either party at any time without notice to any person other than the other party.

D. No rights, duties, obligations, or liabilities enforceable at law are created by this agreement.

E. No action based upon this agreement may be brought against the United States or the State of California by any person.

F. This agreement does not alter, modify, abridge, or in any way affect any rights, duties, obligations, or liabilities of any person under the laws of the United States or the State of California.

G. In the event that individual and severable portions of this agreement are found to be in conflict with either State or Federal law, regulations or policies, and therefore of no effect, the agreement will remain in effect without those provisions, unless either Party notifies the other in writing that the entire agreement is terminated.

H. Any action to modify, amend or terminate this agreement may only be taken by the Governor of the State of California or the Commander, Eleventh Coast Guard District or person to who this authority is specifically delegated by them.

I. This MOA supercedes and replaces the MOA signed on June 2, 1993.

FOR THE STATE OF CALIFORNIA:

PETE WILSON
Governor
State of California

Date:

FOR THE UNITED STATES COAST GUARD:

R. T. RUFE
Vice Admiral, USCG
Commander,
Eleventh Coast Guard District

Date:

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**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
DEPARTMENT OF FISH AND GAME'S
OFFICE OF SPILL PREVENTION AND RESPONSE
AND THE
STATE WATER RESOURCES CONTROL BOARD
RELATING TO
DISCHARGES ASSOCIATED WITH RESPONSE ACTIVITIES
CONDUCTED PURSUANT TO CH. 7.4, DIVISION 1
OF THE GOVERNMENT CODE**

WHEREAS, The Administrator; of the Office of Spill Prevention and Response (hereinafter referred to as OSPR) and the Executive Director of the State Water Resources Control Board (hereinafter referred to as SWRCB), acting for the SWRCB and the Regional Water Quality Control Boards (RWQCBs), are directed by Government Code section 8670.7, as amended by Stats. 1993, ch. 736, to enter into a memorandum of understanding (MOU) to address discharges, other than dispersants, that are incidental to, or directly associated with, the response, containment, and clean up of an existing or threatened oil spill in marine waters, conducted pursuant to Chapter 7.4, Division 1 of the Government Code; and WHEREAS, It is the intent of this MOU that all incidental discharges as defined herein shall occur within the response area in or proximate to the area in which the oil recovery activities are taking place for the purpose of returning any oily water back into the response area; and

WHEREAS, Both the Administrator of OSPR and the SWRCB share the same goal of minimizing any unnecessary deleterious impacts to the environment, or to the public health and safety; and

WHEREAS, The Administrator of OSPR has the primary authority to direct prevention, removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any oil spill in or threatening the marine waters of the State; and

WHEREAS, The SWRCB and the RWQCBs have the primary authority for regulating and ensuring the quality of the waters of the State; and

WHEREAS, This MOU is not effective until approved by the SWRCB and the Administrator of OSPR; and

NOW, THEREFORE, the Administrator of OSPR and the Executive Director of SWRCB (the Parties) have reached the following agreement and clarification of existing law concerning discharges, other than dispersants, that are incidental to, or directly associated with, the response, containment, and clean of an oil spill in marine waters, pursuant to Chapter 7.4, Division 1 of the Government Code.

I. Definitions

The Parties agree that for the purposes of this MOU the following definitions shall apply:

a. Incident Command System or Unified Command Structure:

For the purpose of this section the terms “Incident Command System or Unified Command Structure” mean the procedures established for directing personnel, facilities, equipment, and communications during the response, containment, and cleanup of an oil spill incident in marine waters.

b. Incidental Discharge

“Incidental discharge” means the release of oil and/or oily water within the response area in or proximate to the area in which the oil recovery activities are taking place during and attendant to oil spill response activities. Incidental discharges include, but are not limited to, the decanting of oily water; in order to conserve oil storage capacity, and the wash down of vessels, facilities, and equipment used in the response

c. Marine Waters:

“Marine waters” include all waters defined as marine waters in California Government Code Section 8670.3(h) and all water otherwise within the jurisdiction of the Administrator of OSPR. under Chapter 7.4, Division 1 of the Government Code.

d. National Pollution Discharge Elimination System Permit (NPDES Permit):

An NPDES Permit is any permit issued by the SWRCB or the RWQCBs pursuant to California Water Code section 13370 et seq., as required or authorized by the Federal Clean water Act, Title 33 U.S.C. 1251 et seq.

e. Oily water:

Oily Water means any substance, matter, or medium containing or permeated with any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas. Waste includes, but is not limited to, seaweed, driftwood, debris, and other similar types of materials.

f. Response:

Response means the time period when response personnel, acting under the authority of the Administrator, the Federal On-Scene Coordinator, the State On-Scene Coordinator, through the Incident Command System or Unified Command Structure, are performing Response Activities that are reasonably necessary to prevent, reduce, or mitigate damages to persons, property, and/or natural resources of this State due to an oil spill incident in marine waters.

g. Response Activities:

Response Activities means those activities, consistent with the National Contingency Plan, the State Oil Spill Contingency Plan, or taken at the direction of the Administrator or Federal On-Scene Coordinator through the Incident Command System or Unified Command Structure, in response to a spill, that

entail the removal of oil from marine waters of the State. This includes all activities conducted on-water or onshore relating to the separation, recovery, containment, transfer, or treatment of marine waters of the State contaminated by oil and/or oily materials.

h. Response Area:

Response Area means the area of marine waters where response activities are occurring as defined by the daily work plan approved under the Incident Command System or Unified Command Structure by the Administrator, Federal On-Scene Coordinator, or State On-Scene Coordinator.

i. Waste Discharge Requirements

“Waste Discharge Requirements” are a set of requirements issued by the RWQCBs, pursuant to California water Code section 13260 et seq., regulating the discharge of waste that could affect state waters. Waste Discharge Requirements may be issued by the SWRCB upon the review of an action or failure to act by a RWQCB, pursuant to Water Code section 13320.

II. NPDES Permits

The Parties agree that:

The incidental discharges covered by this MOU are consistent with the State Contingency Plan and the National Contingency Plan. Incidental discharges as described in this MOU which are in compliance with the instructions of the On-Scene Coordinator, pursuant to the National Contingency Plan or the applicable Coast Guard regulations, are excluded from regulation under an NPDES permit, as provided by the Federal Environmental Protection Agency regulation 40 C.F.R. 122.3(d), are consistent with Federal laws and regulations, and do not constitute a prohibited discharge.

III. Waste Discharge Requirements

The Parties agree that:

a. It is in the public interest for the RWQCBs for the North Coast, San Francisco Bay, Central Coast, Los Angeles, Santa Ana and San Diego Regions to waive the issuance of waste discharge requirements for incidental discharges, within the response area during a spill response as provided in Water Code section 13269. The SWRCB will recommend such action to the RWQCBs.

b. Such discharges do not create a vested right to discharge, but rather such discharges are privileges, as provided by California Water Code section 13263(g).

IV. Miscellaneous

- a. The terms of this agreement may be changed at any time by the Parties by a written, signed amendment hereto with or without notice to any other person.
- b. Either party may terminate the agreement at any time without notice to any person other than the other party.
- c. No rights, duties, obligations, or liabilities enforceable at law are created by this agreement.
- d. This agreement does not alter, modify, abridge, or in any way affect any rights, duties, obligations, or liabilities of any person under the laws of the State of California.
- e. In the event that individual and severable portions of this agreement are found to be in conflict with either state or federal law, regulations or policies, and, therefore, of no effect, the agreement will remain in effect without those provisions unless either party notifies the other in writing that the entire agreement is terminated..
- f. Any action to modify, amend, or terminate this agreement may only be taken by the Administrator of OSPR and the Executive Director of SWRCB, or persons to whom this authority is specifically delegated by them. Any such modification is not effective until approved by the SWRCB.

FOR THE OFFICE OF OIL SPILL
PREVENTION AND RESPONSE:

Pete Bontadelli
Administrator
Date:

FOR THE STATE WATER RESOURCES
CONTROL BOARD:

Walt Pettit
Executive Director
Date:

State of California

M e m o r a n d u m

To : Ben D. Kor, NCRWQCB
Steven R. Ritchie, SFBRWQCB
Roger Briggs, CCRWQCB
Robert P. Ghirelli, LARWQCB
Gerard J. Thibeault, SARWQCB
Arthur L. Coe, SDRWQCB

Date: APR 28 1995

Walt Pettit
Executive Director

From : STATE WATER RESOURCES CONTROL BOARD
901 P Street, Sacramento. CA 95814 Mail Code G-8

Subject: WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR INCIDENTAL
DISCHARGES ASSOCIATED WITH OIL SPILL RESPONSE ACTIVITIES

In 1993 the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act was amended to require that the Administrator of the Office of Spill Prevention and Response (OSPR) and the Executive Director of the State Water Resources Control Board (SWRCB) enter into a memorandum of understanding (MOU), which addresses all permits and other requirements pertaining to the incidental discharge of wastewater during oil spill response activities. An MOU was subsequently signed in 1995. A copy is attached for your reference as Attachment I.

The MOU addresses discharges of oily water which occur during oil spill response activities within or proximate to oil spill response areas. The MOU finds that these discharges are exempt from regulation under a National Pollutant Discharge Elimination System (NPDES) permit. The MOU also provides that the SWRCB will recommend that the coastal Regional Water Quality Control Boards (RWQCBs) waive the issuance of waste discharge requirements for these types of discharges.

The purpose of this memorandum is to request that you take appropriate action to amend the waiver resolution or water quality control plan, as appropriate, for your region to include incidental discharges on the list of discharges for which waste discharge requirements are waived. Waiver of this type of discharge would be in the public interest, as provided' in Water Code section 13269, because the issuances of waste discharge requirements under the circumstances could significantly impede oil spill cleanup. Also, the addition of incidental discharges to an RWQCB's waiver list could be considered categorically exempt from the California Executive Officers.

Environmental Quality Act, Public Resources Code section 21000, et seq. under the emergency project exemption. See 14 C.C.R. § 15269. The addition of incidental discharges to an RWQCB's waiver list would also be exempt from review by the Office of Administrative Law under the Administrative Procedure Act, Government Code section 11340, et seq. See Gov. Code § 11352(b).

Sample language for inclusion in the RWQCB's waiver resolution is contained in Attachment 2. Please contact Sheila Vassey, Senior Staff Counsel, in the Office of the Chief Counsel at (916) 657-2408 or Calnet 8-437-2408 if you would like further information regarding this matter.

Attachments (2)

cc: Pete Bontadelli Administrator Office of Spill Prevention and Response Department of Fish and Game
1700 K Street, Suite 250 Sacramento, CA 95814

Barry R. Ogilby Carlsmith, Ball, Wichman, Murray, Case & Ichiki
555 South Flower Street, 25th Floor Los Angeles, CA 90071-2326

**MEMORANDUM OF UNDERSTANDING
RELATING TO
THE HANDLING AND TRANSPORT OF MATERIALS
USED OR RECOVERED DURING AN OIL SPILL
BETWEEN THE
DEPARTMENT OF FISH AND GAME'S
OFFICE OF SPILL PREVENTION AND RESPONSE
AND
THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

WHEREAS, The Administrator of the Office of Spill Prevention and Response within the Department of Fish and Game (hereinafter referred to as OSPR) and the Director of the Department of Toxic Substances Control (hereinafter referred to as DTSC) are interested in developing a preapproved process for the handling and transport of materials used or recovered during an oil spill response, including materials that may be classified as hazardous waste; and

WHEREAS, Both the Administrator of OSPR and the Director of DTSC share the same goal of minimizing any unnecessary deleterious impacts to the environment, or to the public health and safety; and

WHEREAS, The Administrator of OSPR has the primary authority to direct prevention, removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any oil spill in the marine waters of the State; and

WHEREAS, The Director of DTSC has the primary authority for regulating the handling, transport, recycling, treatment, and disposal of all hazardous waste within the State; and

WHEREAS, Both the Administrator of OSPR and the Director of DTSC are required under State law to establish a process for the handling and transport of materials used or recovered during an oil spill response.

NOW, THEREFORE, the Administrator of OSPR and the Director of DTSC (the Parties) have reached the following Memorandum of Understanding (MOU) and clarification of existing law concerning the handling and transport of materials used, collected, or recovered during an oil spill response.

I. Definitions

The Parties agree that for the purposes of this MOU the following definitions will apply:

a. Emergency Permit

“Emergency permit” means a permit issued by the DTSC in accordance with Title 22, California Code of Regulations, Section 66270.61.

b. Federal On Scene Coordinator

“Federal On Scene Coordinator” means the federal designated representative from the U.S. Coast Guard or the U.S. Environmental Protection Agency who represents the federal government within the Unified Command.

c. Immediate Response

“Immediate response” means the time period when response activities are undertaken that are reasonably necessary to prevent, reduce, or mitigate damages to persons, property, or natural resources of this State due to a threatened or actual spill of oil and/or oily materials.

d. Incident action plan

“Incident action plan” means the document(s) that describe those response activities approved by the Incident Commander or Unified Command.

e. Incident Commander

“Incident Commander” means the state designated representative for coordinating response to oil spills. The Administrator of OSPR or his or her designee is the Incident Commander during a spill and represents the state within the Unified Command.

f. Oil and/or oily materials

“Oil and/or oily materials” means any substance, matter, or medium containing or permeated with any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oily water, oil mixed with waste, and liquid distillates from unprocessed natural gas.

g. Orphan spill

“Orphan spill” means a situation where a Responsible Party does not exist, is unknown, or the Responsible Party is unable or unwilling to provide adequate and timely cleanup and/or to pay for the damages resulting from the spill.

h. Response Activities

“Response activities” means those activities that render care, assistance, or advice in accordance with the National Contingency Plan (40 CFR 300 et seq.), the State Oil Spill Contingency Plan, or at the direction of the Incident Commander or Unified Command during an immediate response to a spill or threatened spill of oil and/or oily materials. Response activities are approved in the incident action plan and include for the purposes of this MOU, but are not limited to, separation, recovery,

containment, transfer, or transport of oil and/or oily materials to temporary storage sites.

i. Response Area

“Response area” means the area where response activities are occurring or will be occurring as designated and approved by the Incident Commander or Unified Command within the incident action plan. Response area may include, but is not limited to, the location(s) of temporary storage sites and areas associated with a response vessels or other vehicle routes to such sites.

j. Response personnel

“Response personnel” are those individuals or entities performing response activities. Response personnel includes, but is not limited to, all employees, agents, designees, or subcontractors of the Responsible Party, including oil spill cleanup organizations as well as local, state or federal agency employees, volunteer workers, or individuals or entities acting under the direction of the Incident Commander or the Unified Command.

k. Responsible Party

For the purposes of this MOU, “Responsible Party” means any of the following:

- (1) The owner or transporter of oil and/or oily materials or a person or entity accepting responsibility for the oil and/or oily materials; or
- (2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility; or
- (3) A person or entity who, as a shore-based representative of a vessel or facility owner or operator, has full written authority to implement an oil spill contingency plan or otherwise accepts responsibility for the vessel or marine facility.

To the extent permitted by law, oil spill response organizations are not considered a Responsible Party solely due to their performance of response activities authorized in this MOU.

l. Spill or discharge

“Spill” or “discharge” means any release of oil and/or oily materials into or any federal, state, or local government entity does not authorize that impacts state waters that.

m. Temporary Storage Site

“Temporary storage site” means an area or facility approved by the Incident Commander or Unified Command for characterizing and

temporarily storing recovered oil and/or oily materials used, collected, or recovered during an oil spill response. Such an area may include, but is not limited to, permitted or interim status hazardous waste storage facilities, other non-permitted facilities, vessels, barges, tanks, barrels, containers, storage piles, or other appropriate containment methods and locations that may be used to hold recovered oil and/or oily materials. Temporary storage sites need not be owned, operated, or leased by a Responsible Party.

n. Unified Command

“Unified Command” consists of the state Incident Commander, the Federal On Scene Coordinator and the Responsible Party. The Unified Command determines the procedures for directing personnel, facilities, equipment, and communications during the response, containment, and cleanup of an oil spill.

II. Implementation

The Parties agree that:

- a. The Director of DTSC will designate individual(s) (hereinafter DTSC representative(s)) in advance or when notified by OSPR, the Office of Emergency Services, or the U.S. Coast Guard that a threatened or actual spill or discharge of oil and/or oily materials has occurred who are authorized to implement and ensure compliance with all terms and conditions of this MOU.
- b. The DTSC representative(s) will immediately report to the Incident Commander or Unified Command for assignment where needed and represent the DTSC throughout the response, containment, and cleanup of the spill.
- c. The DTSC representative(s) will ensure that all appropriate federal, state, and local agencies are kept informed of potential or actual hazardous waste issues throughout the response and related disposal activities.
- d. The Administrator of OSPR agrees to take appropriate efforts to ensure that a Responsible Party reimburses DTSC for all reasonable and necessary response costs incurred and to fund the positions of all reasonably necessary DTSC personnel throughout the duration of an orphan spill.

III. Immediate Response Exemption

The Parties agree that:

- a. During an immediate response, all response activities conducted on water within the response area will be exempt from obtaining a hazardous waste facility permit pursuant to section 66270.1(c)(3)(A), Title 22,

California Code of Regulations, Division 4.5, and 66263 (hazardous waste manifesting) for treatment or containment activities.

- b. Response personnel will use the generator identification number issued for emergency response actions. However, other than the Responsible Party, owners and operators of response equipment, including but not limited to, tanker vessels, barges, or other waterborne craft, vacuum trucks, or other vehicles performing response activities shall not be deemed hazardous waste generators for the purposes of this MOU and shall not require generator identification numbers.
- c. During an immediate response all oil and/or oily materials used, collected, or recovered within the response area will be allowed to be expeditiously removed, transferred, or transported to temporary storage sites without uniform hazardous waste manifests.
- d. The immediate response exemption created in Article III shall be in effect at all times, for a period of up to thirty (30) days, while oil and/or oily materials are being recovered, transported, or transferred to temporary storage sites for material characterization. Additional thirty (30) day extensions may be granted under appropriate circumstances.

IV . Temporary Storage Sites

The Parties agree that:

- a. As soon as practicable once an immediate response has commenced, the Incident Commander or Unified Command will designate or approve temporary storage sites for storing all oil and/or oily materials used, collected, or recovered during a spill response.
- b. The Incident Commander will notify DTSC of all designated or approved temporary storage sites, and, to the extent practicable and feasible, will work in conjunction with the DTSC representative(s) and other state and local agencies to avoid any unnecessary deleterious impacts to the environment or threats to the public health and safety when designating or approving temporary storage sites.
- c. The Incident Commander will ensure that DTSC representatives have full access to all temporary storage sites to perform all appropriate regulatory activities.
- d. Permitted or interim status hazardous waste facilities, or other authorized facilities will obtain an emergency permit from DTSC to modify or necessitate modifying any existing permits issued by DTSC for acting as a temporary storage site. The Responsible Party will be liable for all costs associated with the emergency permit.
- e. Oil and/or oily materials stored or otherwise contained at temporary storage sites may not be transferred, transported, treated, disposed, processed, used or re-used, or otherwise utilized until the Incident

Commander or Unified Command authorizes such activities. Authorization will not be given until such materials have been characterized (as described in Article V.), and a volumetric determination of the amount of such materials recovered has been made or approved by the Incident Commander.

V. Material Characterization

The Parties agree that:

- a. Once the oil and/or oily materials have been contained at the temporary storage site, the Responsible Party, or, in the event of an orphan spill, the Incident Commander in conjunction with DTSC, must expeditiously determine:
 - (1) Those materials that are capable of being processed, used or re-used, or otherwise utilized as an ingredient in the manufacture of petroleum products or other products and therefore not a waste or hazardous waste; or
 - (2) Those materials that are waste but are nonhazardous waste; or
 - (3) Those materials that are hazardous waste.
- b. Materials capable of being processed, used or re-used, or otherwise utilized as an ingredient in the manufacture of petroleum products or other products will be expeditiously transported to any facility that is otherwise authorized during non-spills to perform such activities. Facilities performing such activities will obtain emergency permits from DTSC before processing, using or re-using, or utilizing such materials. The Responsible Party will be liable for all costs associated with the emergency permit.
- c. Recovered oil and/or oily materials deemed a waste by the Responsible Party, or by DTSC, must undergo chemical waste characterization as provided in Title 22, California Code of Regulations, sections 66264.13 and 66265.13, to determine whether the materials recovered are hazardous waste.
- d. Materials characterized as hazardous waste after undergoing characterization will be managed in accordance with all applicable statutes, regulations, or permits prior to and during transfer, or transport to a hazardous waste management facility.
- e. Notwithstanding V.(a)-(d) or any other provision of law, debris that is contaminated only with petroleum or any of its fractions is exempt from regulation under Chapter 6.5, of Division 20 of the Health and Safety Code if all of the following conditions are met:

- (1) The debris consists exclusively of wood, paper, textile materials, concrete rubble, metallic objects, or other solid manufactured objects.
- (2) The debris is not subject to regulation as a hazardous waste under the federal act.
- (3) The debris does not contain any free liquids, as determined by the paint filter test specified in the regulations adopted by the department.
- (4) The debris is disposed of in a composite lined portion of a waste management unit which is classified as either a Class I or Class II landfill in accordance with Article 3 (commencing with Section 2530) of Chapter 15 of Division 3 of Title 23 of the California Code of Regulations, the disposal is made in accordance with the applicable requirements of the California regional water quality control board and the California Integrated Waste Management Board, and, if the waste management unit is a Class II landfill, it is sited, designed, constructed, and operated in accordance with the minimum standards applicable on or after October 9, 1993, to new or expanded municipal solid waste landfills, which are contained in Part 258 (commencing with Section 258.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations read on January 1, 1996.

VI. Emergency Permit

The Parties agree that:

- a. Once oil and/or oily materials have been deemed hazardous waste at the temporary storage site(s), the DTSC representative will expeditiously determine if the storage of such materials creates an imminent and substantial endangerment to human health or the environment.
- b. If such determination is made, the DTSC representative will immediately issue an emergency permit to the Responsible Party, or to the Incident Commander in the event of an orphan spill, for the temporary storage site(s).
- c. The emergency permit will thereafter be valid throughout the duration of the response activities but in no case in excess of ninety (90) days unless extended in writing by DTSC pursuant to Title 22, California Code of Regulations, Section 66270.61.
- d. The emergency permit shall allow all response personnel to expeditiously perform all other response activities (within the scope of DTSC's authority) that are reasonably necessary to prevent, reduce, or mitigate damages to persons, property, or natural resources of this State including transfer, treatment, storage, resource recovery, or disposal of materials used, collected, or recovered during the oil spill response.

VII. Miscellaneous

The Parties agree that:

- a. The terms of this MOU may be changed at any time by the mutual consent of both Parties by a written, signed amendment hereto.
- b. In the event that individual and severable portions of this MOU are found to be in conflict with either State or Federal law, regulations or policies, and, therefore, of no effect, the MOU will remain in effect without those provisions unless either party notifies the other in writing that the entire MOU is terminated.
- c. Any action to modify, amend, or terminate this MOU may only be taken by the Administrator of OSPR and the Director of DTSC, or persons to whom this authority is specifically delegated by them.

FOR THE OFFICE OF OIL SPILL
DEPARTMENT OF
PREVENTION AND RESPONSE:
CONTROL:

FOR THE

TOXIC SUBSTANCES

Pete Bontadelli
Administrator

Jesse Huff
Director

FOR THE DEPARTMENT OF FISH
AND GAME: